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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 THOMAS ERIC CONMY,

11 Defendant.

Case No. 2:05-CR-00083-KJD-GWF
2:15-CV-00875-KJD

ORDER

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13 Before the Court is Defendant's Motion Pursuant to 28 U.S.C. § 2255(f)(4) (#144). Also
14 before the Court is Defendant's Motion for Discovery (#145).

15 I. Background

16 In 2006, a jury convicted Defendant of possession with the intent to distribute a
17 controlled substance, manufacture of methamphetamine, and possession of a firearm by a
18 convicted felon (#63). Defendant received two life sentences for the drug-related charges and
19 120 months imprisonment for the firearms violation (#80). Defendant appealed (#82), but the
20 Ninth Circuit upheld this Court's judgment (#95).

21 Defendant filed a § 2255 motion (#100) and an amended § 2255 motion (#104). The
22 Court denied both motions (#114). Defendant appealed the Court's decision (#120). The Ninth
23 Circuit dismissed Defendant's appeal (#127).

24 Nearly a year later, Defendant filed a complaint in the District of Colombia (#1 in 2:15-
25 cv-00495-KJD-VCF). The District noted that Defendant's claims properly arose under 28 U.S.C.

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§ 2255 and transferred the case to the District of Nevada (#4 in 2:15-cv-00495-KJD-VCF). Defendant asked this Court to construe his complaint as a § 2255 motion (#7 in 2:15-cv-00495-KJD-VCF). The Court did so, but denied the § 2255 motion because it was not properly certified as required by 28 U.S.C. § 2255(h) (#9 in 2:15-cv-00495-KJD-VCF). Defendant then filed the present motions.

II. Analysis

This is Defendant's third § 2255 motion filed with this Court. 28 U.S.C. § 2255 provides that:

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

As this Court previously noted,¹ the Ninth Circuit has not certified a second or successive motion. The Court consequently denies Defendant's third § 2255 Motion. Because Defendant's third § 2255 Motion is denied, Defendant's Motion for Discovery is moot.

III. Conclusion

Accordingly, it is **HEREBY ORDERED** that Defendant's Motion Pursuant to 25 U.S.C. § 2255(f)(4) (#144) is **DENIED**;

IT IS FURTHER ORDERED that Defendant's Motion for Discovery (#145) is **DENIED** as moot;

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¹ See #9 in 2:15-cv-00495-KJD-VCF.

1 **IT IS FURTHER ORDERED** that Defendant is **DENIED** a certificate of appealability.

2 DATED this 11th day of June 2015.

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6 Kent J. Dawson
7 United States District Judge
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